

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL LEWIS, LAUREN TAYLOR,  
and minors C.L. and B.L., by and through  
their Guardian ad Litem,

Plaintiffs,

v.

COUNTY OF SAN DIEGO; CITY OF  
CORONADO; CORONADO POLICE  
OFFICER PATRICK O'MALLEY;  
CORONADO POLICE OFFICE  
ROBERT CLINE; COUNTY AGENT  
IAN BAXTER; COUNTY AGENT N.  
QUINTEROS; COUNTY AGENT  
SUPERVISOR BENITA JEMISON;  
COUNTY AGENT ABIGAIL JOSEPH;  
COUNTY AGENT SUPERVISOR  
ANTONIA TORRES; COUNTY AGENT  
BROOKE GUILD; COUNTY AGENT  
SUPERVISOR ALFREDO GUARDADO;  
and DOES 1 through 50,

Defendants.

Case No. 13-cv-2818-L (JMA)

**ORDER GRANTING MOTION TO  
DISMISS WITHOUT PREJUDICE  
[No. 24]**

Plaintiffs' First Amended Complaint ("FAC") alleges federal claims under 42 U.S.C. §  
1983 and state law claims against Defendants. The City of Coronado and Coronado Police  
Officers Patrick O'Malley ("O'Malley") and Robert Cline ("Cline") now move to dismiss the  
claims under Federal Rule of Civil Procedure 12(b)(6). The motion has been fully briefed and is

1 decided on the papers submitted.

2 **I. BACKGROUND**

3 Plaintiffs, Michael Lewis (“Lewis”) and Lauren Taylor (“Taylor”) are parents of two  
4 children, B.L. and C.L. (FAC ¶ 2.) On August 5, 2011, City of Coronado police officers received  
5 an anonymous “tip” that the family was running an illegal daycare and smoking marijuana  
6 around children. (*Id.* ¶ 5.) That day, officers, whose identity is unknown, went to the Lewis  
7 family home, while Taylor and the children were absent, but Lewis allowed them enter and to  
8 take photographs. (*Id.* ¶ 6.) Although the officers did not discover a “daycare facility,” they did  
9 find marijuana. (*Id.* ¶¶ 6, 7.) Lewis presented the officers with his medical marijuana  
10 recommendation showing that he legally used marijuana to treat migraines upon the advice of  
11 his physician. (*Id.* ¶ 7.) The officers left and wrote a report indicating the marijuana was the only  
12 purported “hazard” in the residence. (*Id.*)

13 Three days later, on August 8, 2011, County Agents Ian Baxter (“Baxter”) and N.  
14 Quinteros (“Quinteros”), working for the County of San Diego Health & Human Services  
15 Agency, arrived at the Lewis family home. (FAC ¶¶ 8, 9.) They were accompanied by Coronado  
16 Police Officers O’Malley and Cline who, upon searching the home and examining the children,  
17 found the home to be neat and clean, and the children to be in good health and appropriately  
18 dressed. (*Id.*) Baxter and Quinteros allegedly consulted with their County supervisors and with  
19 the City Police Officers, O’Malley and Cline. (FAC ¶ 11) Baxter and Quinteros then allegedly  
20 reached some form of consensus with the police officers, O’Malley and Cline, and took C.L. and  
21 B.L. from their home. (*Id.* ¶ 11.) Additionally, Plaintiffs contend that O’Malley and Cline  
22 provided armed support and were “integral participants” in the removal and detention of the  
23 children. (*Id.* ¶ 11.) Plaintiffs further allege that the County Agents and the City police officers  
24 removed C.L. and B.L. without a warrant based on allegations of “general neglect.” (*Id.* ¶ 13.)  
25 According to Plaintiffs, the only allegations against Lewis and Taylor were that Lewis legally  
26 used marijuana and police found marijuana in the home. (*Id.* ¶ 12.) Specifically, Plaintiffs assert  
27 there was no reasonable evidence to suggest that either child was in immediate danger of  
28 suffering severe bodily injury or death at the hands of their parents, which would have been

1 necessary to obtain a protective custody warrant. (*Id.*)

2       Following the removal of the children, Baxter and Quinteros took the children to the  
3 Polinsky Center – an emergency shelter for allegedly abused and neglected children in San  
4 Diego County. (*Id.* ¶ 13.) The same day the children were removed from their home, the  
5 Polinsky Center confirmed the children were developmentally on target and there were no signs  
6 of physical, emotional or other abuse. (*Id.* ¶ 15.) Despite evidence submitted by the parents,  
7 again on the same day, showing a clean kitchen, a lockbox for medication and a padlock where  
8 the marijuana was grown, Baxter and Quinteros continued to detain the children. (*Id.* ¶¶ 16, 17.)  
9 Further, Baxter and Quinteros’ supervisors, Jemison and Guardado, maintained their decision to  
10 continue the detention of the children following a detailed review of the matter. (*Id.* ¶ 17.)

11       Baxter filed a petition with the juvenile court in the County of San Diego, on behalf of  
12 himself and the County, asserting one count against Lewis and Taylor. (*Id.* ¶ 18.) Plaintiffs  
13 allege that Baxter misled the court by making false statements. (*Id.* ¶20.) At some point, County  
14 Agent Joseph, and his supervisor Agent Torres, replaced Baxter’s role as lead agent on the case.  
15 (*Id.* ¶ 24.) On February 6, 2012, the court, based on the allegedly false information provided by  
16 the County Agents, declared C.L and B.L. dependants of the juvenile court. (*Id.* ¶ 24.) Lewis  
17 appealed, and on August 2, 2012, the Court of Appeal reversed the juvenile court’s order. (*Id.* ¶  
18 33.) The children remained out of their home for approximately 364 days, until the family was  
19 reunited on August 7, 2012. (*Id.* ¶ 34.)

20       On July 31, 2013, Plaintiffs commenced an action in the Superior Court of the State of  
21 California, San Diego, against Defendants County of San Diego, City of Coronado, O’Malley,  
22 Cline, Baxter, Quinteros, and various county employees. On November 27, 2013, Defendants  
23 removed the action to federal court. Defendants City of Coronado, O’Malley, and Cline then  
24 moved to dismiss the Complaint under Federal Rule of Civil Procedure 12(b)(6). On July 15,  
25 2014, this Court granted the motion with leave to amend. (ECF No. 12.)

26       On August 25, 2014, Plaintiffs filed their FAC, asserting seven causes of action: (1)  
27 deprivation of the 14th Amendment right to familial relations under 42 U.S.C. § 1983; (2)  
28 unconstitutional official policy, practice, or custom under 42 U.S.C. § 1983; (3) battery; (4) false

imprisonment; (5) negligence; (6) intentional infliction of emotional distress; and (7) violation of the Bane Act, CAL. CIV. CODE § 52.1. On October 6, 2014, Defendants City of Coronado, O'Malley, and Cline filed the present motion to dismiss the FAC, arguing the allegations fail to state a claim under Federal Rule of Civil Procedure 12(b)(6).

## II. LEGAL STANDARD

The court must dismiss a cause of action for failure to state a claim upon which relief can be granted. FED. R. CIV. P. 12(b)(6). A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). The court must accept all allegations of material fact as true and construe them in light most favorable to the nonmoving party. *Cedars-Sinai Med. Ctr. v. Nat'l League of Postmasters of U.S.*, 497 F.3d 972, 975 (9th Cir. 2007). Material allegations, even if doubtful in fact, are assumed to be true. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). However, the court need not “necessarily assume the truth of legal conclusions merely because they are cast in the form of factual allegations.” *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003) (internal quotation marks omitted). In fact, the court does not need to accept any legal conclusions as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

“While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555 (internal citations omitted). Instead, the allegations in the complaint “must be enough to raise a right to relief above the speculative level.” *Id.* Thus, “[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* A complaint may be dismissed as a matter of law either for lack of a cognizable legal theory

1 or for insufficient facts under a cognizable theory. *Robertson v. Dean Witter Reynolds, Inc.*, 749  
 2 F.2d 530, 534 (9th Cir. 1984).

### 3 **III. DISCUSSION**

#### 4 **A. Plaintiffs' Federal Claims under 42 U.S.C. § 1983**

##### 5 1. Coronado Police Officers O'Malley and Cline

6 The federal claims against O'Malley and Cline arise under 42 U.S.C. § 1983. Plaintiffs  
 7 assert that the County Agents wilfully removed the Lewis children from their home without any  
 8 legal basis and the children were detained due to the continued communication of false  
 9 information to the court. Further, Plaintiffs contend the police officers' liability arises from their  
 10 "integral participation" in the seizure of the children and/or their failure to intercede to prevent a  
 11 constitutional violation. (FAC ¶ 11.) Both theories of liability require, among other elements,  
 12 that the officers' *knew* that the County Agents' actions were unlawful or unconstitutional. As  
 13 discussed below, Plaintiffs fail to allege that Officers O'Malley and Cline were aware that the  
 14 removal of the children took place without a warrant or in the absence of exigent circumstances.<sup>1</sup>

15 The Supreme Court has long recognized that parents hold a liberty interest in familial  
 16 relations under both the Fourth and Fourteenth Amendment, which includes the right to live  
 17 together without government interference. *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *Troxel*  
 18 *v. Granville*, 530 U.S. 57, 65 (2000). Without prior judicial authorization, a child may be  
 19 removed from the custody of its parent "only if the information they possess at the time of the  
 20 seizure is such as provides reasonable cause to believe that the child is in imminent danger of  
 21 serious bodily injury and that the scope of the intrusion is reasonably necessary to avert that  
 22 specific injury." *Wallis v. Spencer*, 202 F.3d 1126, 1138 (9th Cir. 2000). "Officials, including  
 23 social workers, who remove a child from its home without a warrant must have reasonable cause  
 24 to believe that the child is likely to experience serious bodily harm in the time that would be

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25  
 26 <sup>1</sup>Plaintiffs argue that O'Malley and Cline necessarily "'knew' and were 'aware' of the  
 27 plan to seize the children[]" based upon the fact that the County Agents sought the officers'  
 28 advice and consent. (Pls' Opp'n 7.) Further, they contended the officers acted with the County  
 Agents when they "seized C.L. and B.L. without a warrant..." (FAC ¶ 11). These statements  
 however, fail to allege plausible facts that O'Malley and Cline *knew* or were *aware* of the  
 absence of a warrant or exigent circumstances.

1 required to obtain a warrant.” *Rogers v. Cnty. of San Joaquin*, 487 F.3d 1288, 1294 (9th Cir.  
2 2007)(citing *Mabe v. San Bernadino County*, 237 F.3d 1101, 1108 (9th Cir. 2001).

3 a. *Integral Participant*

4 Plaintiffs allege that City Defendants, O’Malley and Cline, are liable for the County  
5 Agents’ seizure of the children, C.L. and B.L. (FAC ¶ 53.) Police officers who are not  
6 themselves explicitly taking part in an unconstitutional act may still be liable under § 1983 if  
7 found to be “integral participants” in the alleged constitutional violation perpetrated by other  
8 officers. *Boyd v. Benton County*, 374 F.3d 773, 781 (9th Cir. 2004). Integral participation in an  
9 illegal seizure requires “*knowledge or a reason to know that no warrant exists* in addition to  
10 some affirmative participation in the search or seizure.” *Monteilh v. County of Los Angeles*, 820  
11 F. Supp.2d 1081, 1092 (C.D. Cal. 2011)(emphasis in original) (citing *Melear v. Spears*, 862 F.2d  
12 1177, 1181 (5th Cir. 1989); *Creamer v. Porter*, 754 F.2d 1311, 1316-17 (5th Cir. 1985)).

13 As a preliminary matter, the cases cited by Plaintiff that ascribe liability for “integral  
14 participation” have done so solely when a police officer participated in the unlawful actions of  
15 another *officer*, not a County agent or other official. *See Boyd v. Benton Cnty.*, 374 F.3d 773 (9th  
16 Cir. 2004). Plaintiff has failed to cite, and the Court has failed to locate, any cases which  
17 supports holding O’Malley and Cline liable for the County Agents’ taking of the children.

18 Plaintiffs also allege that “any reasonable police officer, including Defendants O’Malley  
19 and Cline, *would have known* that it was unlawful to seize and detain a child from the custody  
20 and care of its parent absent a warrant or exigent circumstances.” (Emphasis added) (FAC ¶ 9.)  
21 It is not enough to contend that police officers know or should know the law. Plaintiffs must  
22 allege facts that the officers knew or had reason to know the removal was unlawful. *See*  
23 *Monteilh*, 820 F. Supp.2d at 1092. However, the FAC provides no facts supporting the allegation  
24 that the officers had reason to know the County Agents had not obtained a warrant or court  
25 order. Even if they were aware of the absence of a warrant, Plaintiff must also establish “some  
26 affirmative participation” in the seizure, which they have failed to do. *Monteilh v. County of Los*  
27 *Angeles*, 820 F. Supp.2d 1081. Therefore, Plaintiffs fail to state a plausible claim against  
28 O’Malley and Cline for their “integral participation” in the violation of the Fourteenth



1 Amendment right to familial relations.

2 b. *Duty to Intervene*

3 Additionally, Plaintiffs contend that Police Officers O'Malley and Cline held an  
 4 obligation to intercede and stop the removal of the children when the County Agents consulted  
 5 with them. This court previously rejected this argument as lacking foundation in the law, and  
 6 does so again here. (ELECTRONIC CASE FILING ADMINISTRATIVE POLICIES AND  
 7 PROCEDURES M No. 12.) Nevertheless, Plaintiffs cite to *Caylor v. City of Seattle* as holding  
 8 that an officer who fails to intervene to prevent a constitutional violation "is just as liable as the  
 9 government agent who commits the violation." 2013 WL 1855739 (W.D. Wash. Apr. 30, 2013)  
 10 (Pls' Opp'n, 9.) However, Plaintiff again misstates the rule. "Police officers have a duty to  
 11 intercede when their *fellow officers* violate the constitutional rights of a suspect or other citizen."  
 12 *United States v. Koon*, 34 F.3d 1416, 1447 n. 25 (9th Cir. 1994) (emphasis added). Plaintiffs  
 13 have failed to point to any authority requiring police officers to intervene in the actions of a non-  
 14 officer government agent. Baxter and Quinteros, the agents who physically removed the  
 15 children, are not "fellow officers" but agents working for the County of San Diego Health &  
 16 Human Services Agency. (FAC ¶ 8.)

17 2. City of Coronado Municipality Theory (*Monell* Claim)

18 Plaintiffs allege that the City of Coronado bears liability under § 1983 for enforcing  
 19 unlawful policies, including but not limited to, removing children from their family without  
 20 exigent circumstances or court orders, reporting the presence of marijuana in a family home to  
 21 Child Protective Services regardless of the legality of the use/possession of the drug, and acting  
 22 with deliberate indifference in implementing a policy of inadequate training of the police  
 23 officers. (FAC ¶ 55.) Under *Monell v. Department of Social Services*, a municipal government  
 24 entity may be liable under § 1983 only when the violation of a plaintiff's federally protected  
 25 right can be attributable to the enforcement of a municipal policy, practice, or decision of a final  
 26 municipal policy maker. 436 U.S. 658, 694 (1978). Defendants attack the FAC for failing "to  
 27 allege or identify any City policy or custom, which led to the damages." (MTD, Ps & As 12.)

28 To impose municipal liability on the City of Coronado, Plaintiffs must show that the City

1 had policies, customs, or practices that were “the ‘moving force’ behind the constitutional  
 2 violation [Plaintiffs] suffered.” *Galen v. County of Los Angeles*, 477 F.3d 652, 667 (9th Cir.  
 3 2007) (quoting *Monell*, 436 U.S. at 694–95). Prior to the *Twombly/Iqbal* clarification of the  
 4 federal pleading standard, a claim withstood a motion to dismiss with only “a bare allegation that  
 5 the individual officers’ conduct conformed to official policy, custom or practice.” *Karim-Panahi*  
 6 *v. Los Angeles Police Department*, 839 F.2d 621, 624 (9th Cir. 1988). But in *A.E. ex rel.*  
 7 *Hernandez v. County of Tulare*, the Ninth Circuit clarified the required factual allegations to  
 8 properly plead a *Monell* claim stating:

9 “[W]hatever the difference between [*Swierkiewicz*, *Dura Pharmaceuticals*, *Twombly*,  
 10 *Erickson*, and *Iqbal* ], we can at least state the following two principles common to all of  
 11 them. First, to be entitled to the presumption of truth, allegations in a complaint or  
 12 counterclaim may not simply recite the elements of a cause of action, but must contain  
 13 sufficient allegations of underlying facts to give fair notice and to enable the opposing  
 14 party to defend itself effectively. Second, the factual allegations that are taken as true  
 must plausibly suggest an entitlement to relief, such that it is not unfair to require the  
 opposing party to be subjected to the expense of discovery and continued litigation. *Starr*,  
 652 F.3d at 1216. This standard applies to *Monell* claims and should govern future  
 pleadings in this case.”

15 *AE ex rel. Hernandez v. Cnty. of Tulare*, 666 F.3d 631, 637 (9th Cir. 2012)(citing *Starr v. Baca*,  
 16 652 F.3d 1202, 1216 (9th Cir. 2011)).

17 This Court previously found that Plaintiffs’ claims against the City under § 1983 were  
 18 devoid of factual support and “contain[] mere conclusory statements and a simple formulaic  
 19 recitation of the elements of a cause of action. *See Twombly*, 550 U.S. at 555.” (ELECTRONIC  
 20 CASE FILING ADMINISTRATIVE POLICIES AND PROCEDURES M No. 12.) The  
 21 additional “facts” set forth in the FAC fail to “be enough to raise a right to relief above the  
 22 speculative level.” *Twombly*, 550 U.S. at 555 (internal citations omitted). Plaintiffs have failed to  
 23 plausibly allege any facts that show a “persistent and widespread” policy that the City has an  
 24 established practice of removing children from their homes without a warrant. *See Monell*, 436  
 25 U.S. at 691. Further, the FAC makes clear that the County Agents actually seized and removed  
 26 the children. (FAC ¶ 11.) As previously discussed in greater detail above, Plaintiffs have failed  
 27 to plead any factual content that would allow this Court to draw an inference that the City of  
 28 Coronado is liable for the actions of the County Agents.



1 The additional broad, vague allegations of unlawful policies set forth in the FAC fail to  
 2 satisfy the fair notice requirement necessary to give rise to municipality liability. *AE v. County of*  
 3 *Tulare*, 666 F.3d at 637. In the present case, as in *Mateos-Sandoval v. County of Sonoma*,  
 4 Plaintiffs assert that the city had deliberate customs, practices and habits that were the “moving  
 5 force behind the constitutional violations.” 942 F. Supp.2d 890, 899 (N.D. Cal. 2013) (citing  
 6 *Galen v. County of Los Angeles*, 477 F.3d 652, 667 (9th Cir. 2007)). Unlike the allegations set  
 7 forth in *Mateos-Sandoval*, Plaintiffs here have failed to specifically plead the contents of the  
 8 policies and customs which allegedly gave rise to Plaintiffs’ injuries. Further, Plaintiffs cites  
 9 *Mateos-Sandoval* for the proposition that they “are not required to plead evidence to demonstrate  
 10 a pattern or practice by identifying other instances in which someone was similarly treated by  
 11 defendants. (Pls’ Opp’n 12.) Plaintiff again misstate the rule. *Mateos-Sandoval* involves two  
 12 plaintiffs who, in separate and distinct incidents, experienced nearly identical alleged  
 13 unconstitutional violations of due process. 2013 WL 415600, at 1-3 (N.D. Cal. Jan. 31, 2013).

14 Finally, Plaintiffs’ allegations that the City has a policy or practice of making reports to  
 15 Child Protective Services where marijuana is present in the house similarly fails. The policy,  
 16 even if accurate, does not “plausibly suggest an entitlement to recovery.” (FAC ¶ 58); *see Starr*,  
 17 652 F.3d at 1216.

18 In light of the foregoing, Defendants’ motion on this basis is **GRANTED WITH**  
 19 **LEAVE TO AMEND.**

20 ***B. Plaintiffs’ State Law Causes of Action***

21 ***1. California Government Claims Act***

22 Plaintiffs allege various state law claims against Officers O’Malley, Cline and the City of  
 23 Coronado. These claims are subject to the California Tort Claims Act (“CTCA”), which  
 24 provides that no suit for money or damages may be maintained against a public entity without  
 25 first properly presenting a written claim to the state Victim Compensation and Government  
 26 Claims Board within six months of accrual of the action. CAL. GOV’T CODE §§ 910, 911.2,  
 27 912.4, 912.6, 945.4; *Mangold v. Cal. Pub. Utils. Comm’n*, 67 F.3d 1470, 1477 (9th Cir. 1995).  
 28 However, a plaintiff may apply for leave to file a late claim up to one year from the date the

1 cause of action accrues. Cal. Gov't Code § 911.4. Further, the "failure to allege facts  
 2 demonstrating or excusing compliance with the claim presentation requirement subjects a claim  
 3 against a public entity" to dismissal for failure to state a claim. *State v. Superior Court (Bodde)*,  
 4 32 Cal. 4th 1234, 1239 (2004).

5 Plaintiffs have alleged facts demonstrating their compliance with the CTCA. (FAC ¶ 49.)  
 6 Plaintiffs' Notice of Tort Claims<sup>2</sup> filed on February 7, 2013, stands in direct opposition to  
 7 Plaintiffs' assertion that they "timely served their respective Notices of Tort Claims . . . as  
 8 required under California Government Code section 900, et. seq." (FAC ¶ 49.) To meet the  
 9 timeliness requirement of the CTCA, a claim of damages against the City and its officers should  
 10 have been filed no later than February 8, 2012. This court need not accept as true "allegations  
 11 that contradict matters properly subject to judicial notice" or to material attached to or  
 12 incorporated by reference into the complaint." *Sprewell v. Golden State Warriors*, 266 F.3d 979,  
 13 988–89 (9th Cir. 2001). Additionally, the FAC provides no facts that would excuse Plaintiffs  
 14 from timely compliance with the CTCA claim presentation requirement.

15 In light of the foregoing, Defendants' motion on this basis is **GRANTED WITH**  
 16 **LEAVE TO AMEND.**

17 2. *Failure to Sufficiently Plead the State Law Claims*

18 The state law causes of action against the City and its officers would nevertheless be  
 19 dismissed because Plaintiffs fail to state a plausible claim upon which relief can be granted. FED.  
 20 R. CIV. P. 12(b)(6). Plaintiffs allege the following state law claims: (1) battery; (2) false  
 21 imprisonment; (3) negligence; (4) intentional infliction of emotional distress; and (5) violation of  
 22 the Bane Act, CAL. CIV. CODE § 52.1. Plaintiffs allegations with respect to these claims contain  
 23 mere conclusory statements and a simple formulaic recitation of the elements of the cause of  
 24 action. *See Twombly*, 550 U.S. at 555.

25 To properly plead the tort of battery the plaintiff must allege: (1) the defendant touched

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26  
 27 <sup>2</sup>The Court may take judicial notice of matters not reasonably in dispute and referred to in  
 28 the complaint. *See Branch v. Tunnel*, 14 F.3d 449, 454 (9th Cir. 1994). The Claim for Damages  
 is a public record file with the City of Coronado, is referenced in the FAC and is not reasonably  
 in dispute given that both parties have asked for the Court to take notice.

1 plaintiff or caused him to be touched with the intent to harm or offend him; (2) that plaintiff did  
 2 not consent to the touching; and (3) that the plaintiff was harmed by the conduct. CACI 1300.  
 3 Additionally, a plaintiff bringing a cause of action against a police officer must also demonstrate  
 4 the officer's use of unreasonable force as an element of the battery action. *Edson v. City of*  
 5 *Anaheim* 63 Cal. App.4th 1269, 1272 (1998). The FAC is devoid of any allegations that  
 6 O'Malley and Cline "touched [B.L. and C.L.] , or caused them to be touched." Instead, Plaintiffs  
 7 argue that O'Malley and Cline's "integral participation" in the County Agent's touching of B.L.  
 8 and C.L. shifts liability onto the officers. (Pls.' Opp'n 19.) However, Plaintiffs' fail to provide  
 9 any legal authority supporting their assertions.

10 Moreover, Plaintiffs' other state law causes of action fail to meet the *Iqbal/Twombly*  
 11 plausibility requirement. Plaintiffs assert that for the state law claims of false imprisonment and  
 12 negligence the "CITY and COUNTY are liable for all of the state law causes of action under  
 13 *respondent superior* for the actions of the COUNTY's employee defendants. . . [.]" (FAC ¶¶ 71,  
 14 80.) However, the FAC and Plaintiffs' Opposition, are void of any legal basis under which to  
 15 hold the City responsible for the County Agents' acts. Further, Plaintiffs' causes of action for  
 16 Bane Act violations and intentional infliction of emotional distress vaguely lump all defendants  
 17 together without providing any separate factual allegations of acts taken by O'Malley and Cline  
 18 that would subject them to liability. Thus, because the FAC does not state plausible state law  
 19 causes of action against the Coronado police officers, the City cannot be held vicariously liable.

20 In light of the foregoing, Defendants motion on this basis is **GRANTED WITH LEAVE**  
 21 **TO AMEND.**

#### 22 **IV. CONCLUSION & ORDER**

23 In light of the foregoing, the Court **GRANTS** Defendant's motion to dismiss with  
 24 **LEAVE TO AMEND.** If Plaintiffs intend to file an amended complaint, they must do so by  
 25 February 13, 2015.

26 **IT IS SO ORDERED.**

27 DATED: February 5, 2015

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M. James Lorenz  
United States District Court Judge

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